



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1996

Ms. Tracy B. Calabrese  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR96-1798

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101289.

The City of Houston (the "city") received a request for "any and all information in the file regarding the Neighborhood Traffic Projects for Braeburn Valley and Maplewood West." You assert that the requested information is excepted from required public disclosure under sections 552.101, 552.103, and 552.107 of the Government Code.

Section 552.103(a) excepts from required public disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

To establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. You claim that litigation is reasonably anticipated because the city is "the subject of an on-going investigation by the Southwest Office of Fair Housing and Equal Opportunity's Program Compliance Division of the U.S. Department of Housing and Urban Development" ("HUD"). You submitted an affidavit from the attorney representing the city in which she stated that "litigation is a remedy provided for in the controlling federal law." In this instance, we conclude that you have made the requisite showing that litigation is reasonably anticipated and, therefore, you may withhold the requested information pursuant to section 552.103.

However, section 552.103 is inapplicable once the opposing party has had access to the information at issue. *See* Open Records Decision No. 597 (1991) (litigation exception does not allow governmental body to withhold information already disclosed to other party in litigation). Therefore, the city may not withhold information under section 552.103 if HUD has already had access to it.<sup>1</sup> In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

Ref.: ID# 101289

Enclosures: Submitted documents

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<sup>1</sup>We note that you assert that the information you seek to withhold "has not been made available to HUD or to anyone outside the City."

<sup>2</sup>As we resolve this matter under section 552.103, we need not address the other exceptions you raise.

cc: Ms. Charlene B. O'Shea, President  
Braeburn Valley Homeowners Association  
10027 Villa Lea Lane  
Houston, Texas 77071  
(w/o enclosures)

Mr. Craig Zalk  
Maplewood West Civic Association  
9708 Fondren #106  
Houston, Texas 77096  
(w/o enclosures)